

WA 6906
9.30.85
5a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:

Environmental Protection Agency
Complainant,

v.

Pacific Wood Treating Corporation
EPA ID. No. WAD009036906
Respondent.

RCRA Docket: 1085-09-26-3008P

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

I. PRELIMINARY STATEMENT

A. Contained herein is an administrative action instituted pursuant to §3008 of the the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. §6928], (hereinafter "RCRA" or "the Act"). Complainant is Region 10 of the United States Environmental Protection Agency (hereinafter "EPA" or "Complainant"). Respondent is Pacific Wood Treating Corporation of Ridgefield, Washington (hereinafter "PWT" or "Respondent").



COMPLAINT, COMPLIANCE ORDER, Page 1 of 9

1 B. On August 2, 1983, and pursuant to §3006 of the Act [42 U.S.C.
2 §6926], EPA granted the state of Washington interim authorization
3 (Phases I, IIA and IIB), allowing the state to operate its hazardous waste
4 program covered by these phases in lieu of the federal program. The
5 effect of EPA's approval is that the Washington hazardous waste program
6 and its requirements thereunder became part of the requirements of
7 Subtitle C of RCRA in Washington.

8 C. Pursuant to §3008 of the Act [42 U.S.C. §6928], EPA is authorized to
9 take enforcement action in authorized states regarding activities which
10 constitute violations of any requirements of Subtitle C of the Act.
11 Noncompliance with requirements imposed by the approved Washington program
12 constitutes a violation of Washington's authorized program and also
13 constitutes a violation of the corresponding federal requirements of RCRA
14 Subtitle C [42 U.S.C. Chapter 82, Subchapter III].

15 D. EPA has notified the Washington Department of Ecology (WDOE) of this
16 action as specified at §3008(a)(2) of the Act [42 U.S.C. §6928(a)(2)].

17 E. Complainant has reason to believe and alleges that Respondent has
18 violated regulations promulgated pursuant to Subtitle C, Section 3004 of
19 the Act [42 U.S.C. §6924], and regulations found in Chapter 173-303 of the
20 Washington Administrative Code (WAC), as set forth below.
21
22
23
24
25
26
27
28

II. DETERMINATIONS

1. Respondent owns the Ridgefield Brick and Tile land disposal site located at 3510 N.W. 289th Street, Ridgefield, Washington, hereinafter referred to as the PWT/RBT facility. This facility consists of a hazardous waste landfill, approximately 0.75 acre in size.

2. Respondent submitted to EPA Part A of a hazardous waste permit application for the PWT/RBT facility on May 25, 1983, which indicated that hazardous waste disposed in the landfill consists of ash (from the PWT wood-waste boiler plant) contaminated with the regulated wastes D004 (arsenic) and K001 (bottom sediment sludge from the treatment of wastewaters from wood-preserving processes that use creosote and/or pentachlorophenol).

3. Waste was first received at the PWT/RBT facility in 1979 and was last received on January 25, 1983.

4. The PWT/RBT facility is subject to the provisions of RCRA and to applicable regulations promulgated thereunder, and to applicable Washington State Dangerous Waste Regulations (Chapter 173-303 WAC). Pursuant to 40 CFR §265.1(b), interim status standards apply to facilities which were in existence on November 19, 1980. WAC 173-303-400(3)(a) incorporates by reference the interim status standards of 40 CFR Part 265, Subparts F through R.

5. Closure of the PWT/RBT facility pursuant to 40 CFR Part 265 Subpart G has not been completed.

6. On April 3, 1985, WDOE formally requested that Respondent submit Part B of a hazardous waste permit application. On April 9, 1985, EPA requested submittal of such application, which is due on October 11, 1985.

1 7. Representatives of EPA inspected the PWT/RBT facility on June 12,
2 1984, and April 30, 1985. Pursuant to those inspections and to documents
3 provided to EPA by PWT and WDOE, Respondent is found to be in violation of
4 the following:

5 A. 40 CFR §265.145, which requires that an owner or operator of
6 each disposal facility establish financial assurance for
7 post-closure care of the facility. Respondent stated during the
8 April 30, 1985, inspection that such financial assurance has not
9 been obtained, and evidence of such financial assurance has not been
10 submitted by Respondent.

11 B. 40 CFR §265.91, which requires that ground-water monitoring
12 wells be installed such that their number, locations, and depths
13 ensure that they immediately detect hazardous waste or hazardous
14 waste constituents that migrate from the waste management area to
15 the uppermost aquifer. PWT has failed to install wells capable of
16 ensuring such detection. The monitoring well system established by
17 Respondent consists of four domestic wells located about 1000 feet
18 from the landfill. Information concerning the construction of the
19 wells and the hydrogeology of the site is insufficient to determine
20 water table gradient or flow direction.

21 C. 40 CFR §§265.92(b) and (c), which stipulate the parameters
22 that must be measured as part of a facility's ground-water
23 monitoring program. A report of analysis results for one year of
24 quarterly sampling, submitted by Sweet-Edwards and Associates, Inc.
25 to Respondent, dated January 9, 1985, indicates that the
26 concentrations of only a portion of these parameters have been
27 determined. Specifically, the concentrations of the following

1 parameters were not determined: fluoride, nitrate, Endrin, Lindane,
2 Methoxychlor, Toxaphene, and 2,4-D (EPA interim primary drinking
3 water parameters, required at 40 CFR §265.92(b)(1)); chloride, iron,
4 manganese, phenols, sodium, and sulfate (ground-water quality
5 parameters, required at 40 CFR §265.92(b)(2)); and total organic
6 carbon and total organic halogen (ground-water contamination
7 parameters, required at 40 CFR §265.92(b)(3)).

8 D. 40 CFR §265.93(a), which requires that an outline of a
9 ground-water quality assessment program be prepared and that such
10 program be capable of determining (1) whether hazardous waste or
11 hazardous waste constituents have entered the ground water; (2) the
12 rate and extent of migration of hazardous waste or hazardous waste
13 constituents in the ground water; and (3) the concentrations of
14 hazardous waste or hazardous waste constituents in the ground
15 water. Respondent has failed to prepare an outline of a
16 ground-water quality assessment program which is capable of meeting
17 these requirements (nor does Respondent's current ground-water
18 monitoring program meet such requirements).

19 E. 40 CFR §265.112, for failure to submit a closure plan that is
20 adequate to meet the closure and post-closure requirements for
21 landfills, described at 40 CFR Part 265 Subpart G and 40 CFR
22 §265.310.

23 F. 40 CFR §265.116(a)(1), for failure to submit a post-closure
24 plan which is designed to comply with the ground-water monitoring
25 requirements of 40 CFR Part 265 Subpart F.
26
27

1 III. CIVIL PENALTY

2 For violation of WAC 173-303-400(3)(a); and 40 CFR §§265.145,
3 265.91, 265.92(b), 265.93(a), 265.93(b), 265.112, and 265.118(a)(1),
4 Complainant proposes a civil penalty of TWENTY-TWO THOUSAND FIVE HUNDRED
5 DOLLARS (\$22,500.00), computed in accordance with EPA guidelines for
6 penalties assessed under the Act.
7

8 IV. COMPLIANCE ORDER

9 Based upon the foregoing Determinations and pursuant to §3008 of the
10 Act, it is hereby ordered that Respondent take the following corrective
11 actions within the time periods specified.

12 1. Respondent shall, within 30 (thirty) days of receipt of this
13 Order, submit written verification and documentation that Respondent
14 has met the financial requirements described at 40 CFR Subpart H.

15 2. Respondent shall, within 30 (thirty) days of receipt of this
16 Order, submit a written plan and schedule (hereinafter "proposal")
17 delineating steps that will be taken to bring Respondent into
18 compliance with the applicable ground-water monitoring requirements
19 of 40 CFR Subpart F. Respondent shall implement such proposal
20 within 90 days of this Order.

21 3. Respondent shall, within 30 (thirty) days of receipt of this
22 Order, submit a closure plan and a post-closure plan which comply
23 with the requirements of 40 CFR Part 265 Subpart G.
24
25
26

V. OPPORTUNITY TO REQUEST A HEARING

A copy of the "Consolidated Rules of Practices" governing the penalty proceedings is attached. Under those rules, Respondent has the right to request a hearing to: (a) contest any material fact set forth in the Complaint; (b) contest the appropriateness of the proposed penalty; or (c) contend that Respondent is entitled to judgement as a matter of law.

To avoid being found in default, having the proposed civil penalty assessed, and having the Compliance Order become final without further proceedings, Respondent must file a written response to the Complainant, which must include a request for a hearing, if desired. Such response (if any) must be addressed to the Region 10 Hearing Clerk, Office of Regional Counsel, U.S. Environmental Protection Agency, M/S 613, 1200 Sixth Avenue, Seattle, Washington 98101-3188 and sent within thirty (30) days of Respondent's receipt of this Complaint and Compliance Order. Respondent's response should clearly and directly admit, deny, or explain each of the factual allegations contained in the Determinations section of the Complaint and Compliance Order. The response should contain: (1) a definite statement of the facts which constitute the grounds for defense, and (2) a concise statement of the facts Respondent intends to place at issue in the hearing if requested.

If Respondent fails to file a written answer within thirty (30) days of receipt of this Complaint and Compliance Order, such failure will constitute an admission of all the facts alleged in the Complaint and a waiver of Respondent's right to a hearing. A Final Order upon default will thereafter be issued by the Regional Administrator and filed with the Region 10 Hearing Clerk.

1 Any hearing requested by Respondent will likely be held at the
2 Region 10 office of EPA in Seattle. Hearing held will be conducted in
3 accordance with the enclosed "Consolidated Rules of Practice" [40 CFR Part
4 22 (45 FR 24363)].

5 VI. INFORMAL SETTLEMENT CONFERENCE

6 Whether or not Respondent requests a hearing, Complainant encourages
7 settlement of this proceeding consistent with the provisions of the Act.
8 At an informal conference with representatives of the Complainant,
9 Respondent may comment on the charges and provide whatever additional
10 information Respondent believes is relevant to the disposition of this
11 matter, including any actions Respondent has taken to correct the
12 violations and any other special circumstances Respondent cares to raise.
13 Respondent's request for an informal conference and other questions that
14 Respondent may have regarding this Complaint and Compliance Order should
15 be directed, in writing, to Kenneth D. Feigner, U.S. Environmental
16 Protection Agency, Region 10, M/S 533, 1200 Sixth Avenue, Seattle,
17 Washington 98101-3188, or by telephone to Mr. Feigner at (206) 442-2782.

18 Please note that a request for an informal settlement conference
19 does not extend the thirty (30) day period during which a written answer
20 and request for hearing must be submitted. The informal settlement
21 conference procedure may be pursued simultaneously with the adjudicatory
22 hearing procedure. Any settlement which may be reached as a result of
23 such conference will be embodied in a written Agreed Final Order to be
24 issued by the Regional Administrator of EPA, Region 10, and signed by
25 Respondent. Respondent's signing of such Agreed Final Order would
26 constitute a waiver of Respondent's right to request a hearing on any
27 matter stipulated therein.

28 COMPLAINT, COMPLIANCE ORDER, Page 8 of 9

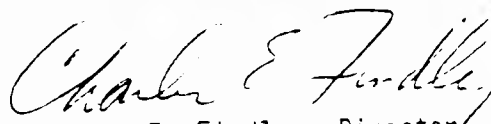
1 VII. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

2 Pursuant to the terms of §3008(c) of the Act, a violator failing to
3 take corrective action within the time specified in a Final Order is
4 liable for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS
5 (\$25,000.00) for each day of continued noncompliance.
6

7 VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

8 Instead of filing an answer requesting a hearing or requesting an
9 informal settlement conference, Respondent may choose to pay the proposed
10 penalty and to comply with the terms of this Complaint and Compliance
11 Order. In that case, payment should be made by sending to the U.S.
12 Environmental Protection Agency, Region 10, P.O. Box 360903M, Pittsburgh,
13 Pennsylvania 15251, a cashier's check or certified check payable to
14 "Treasurer, United States of America" in the amount specified in the
15 "Proposed Civil Penalty" section of this Complaint and Compliance Order.
16

17 DATED this 30th day of September 1985.

18
19 
20 Charles E. Findley, Director

21 Hazardous Waste Division
22
23
24
25
26
27
28